No. 98-267

In The

Supreme Court of the United States

October Term, 1997

DANIEL HOEINGS, a/k/a DANIEL HOINS, on behalf of himself and all other persons similarly situated, and BYRON BUZEK, on behalf of himself and all other persons similarly situated,

Petitioners,

v.

COUNTY OF ADAMS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Nebraska Supreme Court

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

This case involves a dispute over the amount Nebraska county governments were required to contribute to employee retirement accounts under the County Employees Retirement Act ("the Act"). This case is a consolidation of two class actions in which the plaintiff/petitioners are purported representatives of most present and past Nebraska County employees and the defendant/respondents are 91 Nebraska Counties and the Retirement System for Nebraska Counties. The plaintiff/petitioners contend that under the Act Nebraska counties were required to contribute 250% of the employee's contribution. The defendant/respondents contend that they were required to contribute only 150% of the employee's contribution.

The first case was originally filed in 1991 seeking a declaration on the amount of contribution required under the Act. In August of 1992, the Nebraska District Court for Lancaster County sustained a demurrer filed by the defendants on the ground that the petition failed to state a cause of action. From this decision, the plaintiffs appealed (*"Hoeings I"*). On appeal, The Nebraska Supreme Court reversed and remanded the case back to the District Court, holding that the petition did state a cause of action. *Hoeings v. County of Adams*, 516 N.W.2d 56, 248 Neb. 486 (1994). At that time, the plaintiffs' amended their petition to add additional parties and to plead additional facts.

In May of 1995, the plaintiffs filed a second case seeking a declaratory ruling that a 1992 Amendment to the County Retirement Act, Laws 1992, LB1057, was

unconstitutional because it violated the Due Process and Contract Clauses of the United States and Nebraska Constitutions. Both cases sought declaratory relief and monetary damages. The cases were consolidated for trial by the District Court.

On December 20, 1995, the District Court of Lancaster County, Nebraska, heard motions for Summary Judgment on behalf of the plaintiffs Buzek and Hoeings and on behalf of the defendants. The parties had earlier agreed that plaintiffs Buzek and Hoeings were representative of the entire class and, therefore, the district court could decide the issue of liability without certifying the entire class. On Summary Judgment, the district court addressed whether the Act from 1983 to 1992 required an employer contribution of 150% or 250%; whether the plaintiffs had a vested interest in 150% or 250% of the employer account prior to 1992; and whether the 1992 Amendment to the Act violated the plaintiffs' Due Process rights and was, therefore, unconstitutional.

In March of 1996, the district court granted summary judgment for the defendant Counties and against plaintiffs Buzek and Hoeings. The district court held that the Act required an employer contribution of 150%, which was the amount the counties had consistently contributed. The court also held that the 1992 Amendments were not unconstitutional because they did not take any vested rights from the plaintiffs. After the plaintiff/petitioners' Motions for New Trial were overruled, they appealed to the Nebraska Supreme Court.

On appeal for the second time (*"Hoeings II"*), the Nebraska Supreme Court affirmed the decision of the

district court. *Hoeings v. County of Adams*, 574 N.W.2d 498, 245 Neb. 64 (1998). The Nebraska Supreme Court held that the original Act was ambiguous. The court, using rules of statutory construction, determined that the original Act and its subsequent amendments required the counties to contribute 150% to the employees' retirement accounts. In so holding, the Nebraska Supreme Court stated that "at no time did the Legislature intend that the counties make contributions of 250 percent[.]" Because the Act required only a 150% contribution, the Nebraska Supreme Court held that the 1992 Amendment to the Act did not violate the plaintiffs' constitutional rights. Finally, the Nebraska Supreme Court held that there were no due process or other Constitutional violations because the county employees had nothing taken away from them given that the counties had consistently paid the required 150% contribution. From this decision, the plaintiffs petitioned for a writ of certiorari.

PERCEIVED MISSTATEMENT OF FACTS AND LAW

1. Throughout the petitioners' brief they state that the 1992 amendment to the County Retirement Act reduced the amount of the county contribution from 250% to 150%. In actuality, this is exactly one of the issues which the Nebraska Supreme Court had to decide on appeal in *Hoeings II*. The Nebraska Supreme Court found that because the Act required a 150% contribution all along, the 1992 amendment merely clarified the prior ambiguities in the Act and had no substantive effect on

the Act. *Hoeings v. County of Adams*, 574 N.W.2d 498, 505-05, 254 Neb. 64, 73-74 (1998).

2. Throughout the petitioners' brief they state that the Nebraska Supreme Court's holding in *Hoeings I* established that the Act required a 250% contribution. On the contrary, this is also one of the issues which the Nebraska Supreme Court had to decide on appeal in *Hoeings II*. In fact, the Nebraska Supreme Court held that under Nebraska law, the petitioners' argument had "no merit." *Hoeings*, 574 N.W.2d at 503; 254 Neb. at 70.

ARGUMENT

I. THE SUPREME COURT SHOULD NOT GRANT CERTIORARI BECAUSE THIS CASE DOES NOT INVOLVE AN IMPORTANT ISSUE OF FEDERAL LAW.

This case revolves around the interpretation of Nebraska statutes directing Nebraska counties to contribute a certain amount to employee retirement accounts. The petitioners contend that the statutes require a 250% contribution. The respondents contend that the statutes require a 150% contribution. In *Hoeings II* the Nebraska Supreme Court resolved this issue. In *Hoeings II* the court interpreted state law and found that the statutes, when read in pari materia, were ambiguous and in need of judicial interpretation. *Hoeings v. County of Adams*, 574 N.W.2d 498, 503-05, 254 Neb. 64, 70-74 (1998). The court then used state law principles of statutory construction to hold that the statute required a contribution of only 150%. *Id.* Having so ruled, the Nebraska Supreme Court

went on to hold that subsequent amendments to the statute which clarified the ambiguities did not change the substantive meaning of the statutes. *Id.* As such, this Court should not grant certiorari because there are no important questions of federal law.

Nonetheless, the petitioners argue that when the Nebraska Supreme Court first addressed this case in *Hoeings I*, it ruled by implication that the statutes required a 250% contribution. Specifically, the petitioners argue that in *Hoeings I* the Nebraska Supreme Court, in reversing the granting of a demurrer and finding that the petitioners had stated a cause of action, the court necessarily had to find that the statutes required a 250% contribution. The petitioners then reason that the subsequent Nebraska Supreme Court decision in *Hoeings II* violated the Constitution because it reduced the contribution to 150%. In other words, the petitioners' argument is premised on the false assertion that the Nebraska Supreme Court previously ruled that the employee contribution was 250%. From that false assertion, the petitioners attempt to "create" a federal question by arguing that the Nebraska Supreme Court's subsequent decision reduced the contribution, thereby violating the Constitution. This argument, however, does not accurately state the nature of this case.

It is important to point out that the Nebraska Supreme Court rejected this very argument as being without merit. Specifically, the Nebraska Supreme Court stated:

> In holding that Hoeings had stated a cause of action on behalf of a class, we wrote that: "[t]he

> case will turn on the interpretation of the statutes governing county contributions. So far as now appears, the effect on Hoeings and the others will, in that regard, be basically the same, an increase in the amount of contributions to their employer accounts or no change to their accounts." As this language clearly indicates, nowhere in the opinion did we interpret the statutes governing the amount of contributions to be made by the counties. As a result, this assignment of error has no merit.

Hoeings, 574 N.W.2d at 503; 254 Neb. at 70 (quoting *Hoeings v. County of Adams*, 516 N.W.2d at 241, 245 Neb. at 903).

In so holding, the Nebraska Supreme Court relied entirely on Nebraska Law. Thus, under the petitioner's theory, the only way to establish a question of federal law is to persuade this Court that the Nebraska court was incorrect when it interpreted Nebraska law. In other words, the petitioners are asking this Court to reinterpret Nebraska law in a manner which is inconsistent with the Nebraska Supreme Court's interpretation. From that, the petitioners want this Court to find that this Court's reinterpretation of Nebraska law violates the Constitution of the United States. Because the petitioners are asking this Court to engage in a legal fiction in order to create an issue of Federal Law, this Court should refuse to accept the petitioners' invitation.

CONCLUSION

Because the decision of the Nebraska Supreme Court was based on adequate and independent State grounds and did not involve an important question of federal law, this Court should refuse to grant certiorari.

Respectfully submitted,

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